

BOISE, WEDNESDAY, DECEMBER 10, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**TODD and CHRISTINA BATES, husband)
and wife,)**

Plaintiffs-Counterdefendants-Respondents.)

v.)

Docket No. 34856

**STEVEN PAUL SELDIN, JR., and TARA)
RACHELLE BATES, husband and wife;)
THE WHOLE NINE YARDS, INC., an Idaho)
corporation,)**

Defendants-Counterclaimants-Appellants.)

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Phillip M. Becker, District Judge.

Michael B. Schwarzkopf, Boise, for appellants.

Scott Rose, Boise, for respondents.

This appeal arises from a jury verdict in favor of Respondents Todd and Christina Bates. Appellants Steven Seldin, Tara Bates, and the Whole Nine Yards, Inc. (the Company) appeal the district court's denial of Appellants' motion for judgment notwithstanding the verdict, award of costs and attorney fees below in favor of Respondents, and award of costs and attorney fees in favor of Respondents for defending Appellants' post-trial motions to reconsider.

In 2004, Appellants began negotiating with Respondents for the sale of a portion of Appellants' lawn care business, the Company. On December 15, 2004, Respondents sold their home in Hansen, Idaho and issued a check representing the proceeds of the sale totaling \$33,500 to the Company. Shortly thereafter, Respondents moved to Boise and Todd Bates began working for the Company. Respondents also borrowed an additional \$10,000 in order to buy spray trucks and equipment for the Company. Todd Bates worked for the Company without compensation until April 2, 2005.

Respondents filed suit against Appellants seeking to recover the money Respondents invested with the Company. Respondents' suit alleged claims of breach of contract, unjust enrichment, and fraud. The jury found that Appellants breached a contract with Respondents, but awarded no damages on this claim because Appellants proved an affirmative defense

justifying the breach. The jury also found that Respondents unjustly enriched Appellants and awarded Respondents \$7,350 in damages. The jury did not find that Appellants had committed fraud.

After the jury announced its verdict, Appellants filed a motion notwithstanding the verdict, which the district court denied. The district court also awarded Respondents their costs and attorney fees. Appellants subsequently filed a motion to reconsider the denial of its judgment notwithstanding the verdict and a motion to reconsider the award of costs and attorney fees to Respondents. The district court denied both motions to reconsider and awarded Respondents costs and attorney fees for defending the motions.

On appeal, Appellants argue that the district court erred when it denied their motion for judgment notwithstanding the verdict because a recovery based on unjust enrichment is only warranted when no contract exists between the parties. Appellants also argue that Respondents were not the prevailing party below and therefore, the award of costs and attorney fees in favor of Respondents was in error. Alternatively, if Respondents were the prevailing party below, Appellants ask this Court to reduce Respondents award of costs and attorney fees below. Respondents argue that council for Appellants drafted the special verdict jury instruction permitting the jury to find that a contract existed between the parties and still find for Respondents under the theory of unjust enrichment. Therefore, I.R.C.P. 51(b) prohibits Appellants from assigning as error the district court's giving of this jury instruction. Respondents also argue that Appellants failed to timely object to the district court's giving of the jury instruction and that Appellants invited any error by drafting the instruction. Respondents also argue that the district court properly awarded costs and attorney fees below.

BOISE, WEDNESDAY, DECEMBER 10, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STEPHEN R. NEEL,

Claimant-Respondent,

V.

WESTERN CONSTRUCTION, INC.,

Employer and ADVANTAGE

WORKERS COMPENSATION

INSURANCE CO., Surety,

Respondents-Appellants.

Appeal from the Industrial Commission of the State of Idaho.

Bowen & Bailey, LLP, Boise, for appellant.

Monroe Law Office, Boise, for respondent.

Docket No. 34891

Stephen Neel brought a workers' compensation claim against Western Construction, Inc. and its workers' compensation surety, Advantage Workers Compensation Insurance Co. (collectively Employer/Surety), for an injury he sustained in an industrial accident during the course of his employment. After Employer/Surety denied his claim, the Industrial Commission held a hearing and found in favor of Mr. Neel. Medical bills relating to Mr. Neel's treatment were then submitted to Employer/Surety for payment. Employer/Surety submitted the medical bills to a third party for medical cost containment review and based on their review, Employer/Surety tendered reduced payment of the bills to Mr. Neel. Mr. Neel filed a motion with the Industrial Commission compelling payment for the full contractual amount agreed upon between Mr. Neel and the medical providers. The Industrial Commission granted the motion and awarded attorney fees to Mr. Neel based on Employer/Surety's unreasonable denial of full reimbursement for Mr. Neel's medical invoices. Employer/Surety appeals from the Industrial Commission's decision as to the amount of the medical billings and the attorney fee award.

BOISE, WEDNESDAY, DECEMBER 10, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	
)	
v.)	Docket No. 32128
)	
LARRY M. SEVERSON,)	
)	
Defendant-Appellant.)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Elmore County. Hon. Michael E. Wetherell, District Judge.

Molly Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Idaho Attorney General, Boise for respondent.

In the early morning hours of February 15, 2002, Larry Severson discovered that his wife, Mary, was lying on the couch not breathing. Attempts to resuscitate Mary failed and she was pronounced dead at the hospital that same morning. Nine months after Mary's death, Severson was indicted for the first-degree murder of his wife and for poisoning food and/or medicine. He was subsequently tried on both counts. Throughout his trial, Severson made several objections to the handling of his case. Severson's objections, however, were unsuccessful and the case was sent to the jury. After two days of deliberating, the jury returned a general verdict finding Severson guilty on both counts. Severson was then sentenced to life without the possibility of parole for the murder of his wife and to five years for poisoning food and/or medicine.

Severson directly appealed his judgment of conviction to this Court. On appeal, Severson argues that his judgment of conviction should be vacated because: (1) the trial court deprived him of his right to counsel; (2) the trial court erred in allowing the prosecutor to amend the indictment without sending it back to the grand jury; (3) the trial court denied him of his right to a unanimous jury finding of guilt; (4) there was insufficient evidence to find him guilty of murder; (5) serious acts of prosecutorial misconduct deprived him of his right to a fair trial; and (6) the cumulation of these errors deprived him of his right to a fair trial.